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Western Perspective Analysis

Working for Change



Mine dump at St. Kevin Gulch, Upper Arkansas River Watershed, Colo. USGS.

Abandoned mine reclamation work is waiting for legislation to catch up with history

By Daniel Berger,
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Headwaters News
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Across the West, thousands of old mine sites continue to leach toxic heavy metals into streams and other waterways, while environmentalists, agency officials and just about everyone else does little more than put up fences and "keep out" signs.

How is it that these sites continue to pollute? With water so valuable in the region that cities are willing to put farmers and ranchers out of business for it; companies are figuring out how to pump it hundreds of miles, over watershed divides, for growing communities; and conservationists are paying top dollar to leave it where it is, you'd think someone would be after every last drop of the stuff.

They are, but a funny little paradox has kept the lid on efforts to clean up the dirty water.

The Federal Water Control Pollution Act, also known as the [Clean Water Act](#), was written in 1972 to protect the nation's water from industrial pollution. That act contains a provision that says any entity that wants to discharge or affect the discharge of any pollutant into a waterway must acquire a permit. That permit comes bound with a liability clause saying that the holder of the permit is responsible for ensuring the water meets Clean Water Act standards.

This permit system was meant to tie polluters to the responsibility of mitigation: if you take on this situation, you are responsible for leaving it cleaned up. For the most part, the system has worked quite well. But where it fails is with abandoned mines that leach heavy metals into streams and other waterways.

Past skeletons

Once upon a time, when the West was not yet a region and barely a territory, packs of hardscrabble men (and a few similar women) roamed the vast open landscapes in search of valuable minerals. Many traveled by foot or horse with little more than a handful of picks and shovels. The land was harsh, big, dry, dangerous and theirs for the taking. Stake a claim; find some gold or silver; carry it back to town and make a profit.

Railroads, cities, homesteads and timber operations followed from there. While the gippo mining operations continued, many grew more sophisticated, employing steam and gravity powered machines to rip apart

Projects currently under way

While lawmakers and policy wonks hash out Good Samaritan legislation, several state agencies and nonprofit groups are working to clean up some of the West's most polluting abandoned mines.

Because of the way hard rock was mined, many of these sites were in or along creeks and streams, which, by the power of water and time, have cut deep into the rock, exposing the most valuable minerals.

Many of those sites don't involve water quality issues, and therefore don't require getting a Clean Water Act waiver from the Environmental Protection Agency.

In some cases, streams may have been dredged and the scrapings piled and sorted through, or the creeks were diverted to power water wheels or for panning. Work today involves reassembling a waterway that was taken apart and left in pieces, like a child might disassemble a toy.

But many of these sites do involve water quality issues. Mining operations cut into rock, exposing minerals and elements to sun, air and water that then leached heavy metals, such as zinc, mercury and copper, into waterways. Even after a mining operation is gone, this leaching will likely continue to pollute waterways until the problem is fixed.

In other instances, chemicals, such as cyanide, were used in the mining process, and those chemicals are still present in high enough volumes to affect water quality.

Nonprofits and state agencies are working with and around existing laws, under special permits and any way they can to at least start the process of mitigating these abandoned mines.

States such as [Montana](#) and [Arizona](#) have specific

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the earth and dig out the minerals. When miners were finished with an area, they simply packed up and moved onto the next area.

As the West became settled, it wasn't so big any more. The skeletons of past mining operations began to reappear, along with a host of associated problems, perhaps the most important being a loss of water quality.

Today, an estimated 500,000 abandoned mines are scattered around the nation. Almost 40,000 are on national forest land. Colorado alone has about 17,000. Arizona may have as many as 100,000. One estimate says that 40 percent of all headwaters streams in the West are affected in some way by acid mine drainage. Another estimate says that 2,000 miles of streams in Montana are negatively affected by mining waste.

Most of these mines are from a bygone era, where few records were kept. The responsible parties in many cases are dead, out of business, or lost great-grandchildren. In other words, there is no "responsible party."

States, counties and environmental groups are chomping at the bit to be "Good Samaritans" and clean up those mines, but to do so would mean acquiring a permit under the Clean Water Act. Liability concerns have left them standing behind the fences.

Fixing the problems

About 12 years ago, the idea of "Good Samaritan" legislation was introduced, which allows third parties to tackle mine reclamation projects for which there was no identifiable responsible party, with many of the liability issues under the Clean Water Act waived. During the past few years, the national conservation group [Trout Unlimited](#) (PDF), several Colorado environmental groups and the [Western Governors' Association](#) have spearheaded that push. In many cases, the Environmental Protection Agency has provided assistance in developing programs and legislation.

Currently, there are four bills in front of Congress that address "Good Samaritan" legislation: one introduced by Sen. James Inhofe, R-Okla., and supported by the Bush administration; another by Senators Ken Salazar, D-Colo., and Wayne Allard, R-Colo., and two more, (sometimes considered one) by Rep. Mark Udall, D-Colo.

Inhofe's bill has attracted the most attention, because of its support by the Bush administration. Environmentalists' opinions about the bill are mixed. Many are glad to see the legislation, but feel this one, and the Salazar-Allard version, are too lenient with liability waivers.

According to the environmental group Earthworks, formerly the Mineral Policy Center, [these two bills waive up to eight environmental laws](#) — too many for some environmentalists to support — and don't provide any baseline criteria that defines what is meant by "cleaned up". [The other issue with the bills](#), some say, is that they provide no funding source.

"The biggest problems with the legislation," said Rob Roberts, Western Field Coordinator for TU who specializes in abandoned mine reclamation, "is that they waive more environmental laws than we need and don't provide any funding — they're not really addressing the concerns that need to be addressed."

Testifying in front of the U.S. Senate's Committee on Environment and Public Works, Terry Harwood, a former official with the United States Department of Agriculture's Hazardous Materials Policy Council and a retired engineer for the Forest Service, said, "One of my major concerns is while attempting to deal with alleged impediments to voluntary action, we hide from public discussion and consideration the really important issue, the lack of adequate funding and commitment by government and industry."

Mining for money

Rough estimates to clean up all of the abandoned hardrock mines in the country range from \$32 billion to \$72 billion, and as of now, there is no single, secure source of funding. The coal industry is required to pay into a national fund, under the [Surface Mine Control and Reclamation Act](#) (SMACRA), which funds coal mine reclamation projects. Much of that money stays in the East, where coal mining has been more prevalent and a bigger environmental problem. Some money does go toward efforts in a few western states. But the hardrock mining industry has no such fund.

Some have proposed remining — a process by which mining companies re-enter a mine and, using the latest technology and tools, remine an area and, in some cases, its tailings piles, spending a portion of that revenue to fund reclamation. The idea is that the mine will eventually be cleaned, but

the risk to water quality is greater than if the mine were just cleaned. The Western Governors Association does not support remining, and Montana law currently doesn't allow it.

Bonnie Gestring, of the Missoula office of Earthworks, says [her organization supports Udall's bill](#) because it provides a means for funding projects. This bill, she says, puts the funding onus back on hardrock mining companies, requiring them to pay into a fund, similar to what the coal industry does. Nevada already has a similar mine reclamation fund. That bill would bring millions back to states, with [amounts based on current mining activity](#).

In the meantime

Congress seems fairly preoccupied now with a summer recess, the war and upcoming mid-term elections. It may be some time before the "Good Samaritan" bills are addressed. States, too, are working on their own solutions, both legislative and programmatic. But with state Legislatures off for another four months, nothing new is likely to happen in that regard until the new year.

In the meantime, citizen groups and state and federal agencies are working together to clean up what messes they can, working around the current lack of legislation. The EPA also offers several routes for third-party, volunteerism work.

"There are other things that can be done with existing laws," said Carol Russell, an abandoned mine reclamation expert with the EPA. Russell noted that several provisions within the "[Good Samaritan Initiative](#)" allow third parties to clean up many abandoned mines, such as an "administrative order on consent," which Trout Unlimited used on the American Fork project, detailed in the sidebar.

Still, none address Clean Water Act liabilities. As for the mines that continue to violate Clean Water Act provisions, don't fall under Superfund legislation and don't have a clear responsible party, "they're basically left alone," Russell said.

Read more on projects in the accompanying sidebar.

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